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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JERRY G. AGUREN

Appeal 2009-002725
Application 10/669,822[1]
Technology Center 2100

Decided: August 28, 2009

Before JOSEPH L. DIXON, CAROLYN D. THOMAS, and STEPHEN C. SIU, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] Application filed September 24, 2003. The real party in interest is Hewlett-Packard Development Company.

I. STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 15-18 mailed October 19, 2007. Claims 1-3, 5-14, and 19-25 are indicated by the Examiner as allowable, and claim 4 is canceled. Thus, only claims 15-18 are the subject of this appeal. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

In essence, Appellant invented a system for implementing storage strategies for a file. (*See* Claim 15.)

B. ILLUSTRATIVE CLAIM

The appeal contains claims 15-18, as all other pending claims are allowed. Claim 15 is the only independent claim before us. Claim 15 follows:

> 15. A system comprising:
>
> a client computer;
>
> a server coupled to the client computer;
>
> a first storage device coupled to the server having a storage attribute;
>
> a second storage device coupled to the server having a storage attribute;
>
> wherein the server is configured to accept files in a user namespace and in a user file structure; and
>
> wherein the server stores the file on at least one of the first and second storage devices in a global namespace different than the user namespace, the selection of the storage location made by the

server based on the attributes of the storage devices and storage preferences for the file.

C. REFERENCE

The sole reference relied upon by the Examiner as evidence in rejecting the claims on appeal is as follows:

Mikesell	US 2004/0153479 A1 (Provisional Filed Nov. 14, 2002)	Aug. 5, 2004

D. REJECTION

The Examiner entered the following rejection which is before us for review:

Claims 15-18 are rejected under 35 U.S.C. § 102(e) as being anticipated by Mikesell.

II. FINDINGS OF FACT

The following findings of fact (FF) are supported by a preponderance of the evidence.

Mikesell

1. Mikesell discloses "[t]he forward allocator module 110 receives statistics from the other smart storage units that use the intelligent distributed file system, and uses those statistics to decide where the best location is to put new incoming data." (¶ [0096].)

2. Mikesell discloses that "[t]he Local File System Layer handles metadata data structure lookup and management. . . . a single file may have many different names, a single file may be accessed via different paths, and new files may be copied over old files in the VFS namespace without overwriting the actual file data . . . ." (¶ [0076].)

3. In Mikesell, "the word module refers to logic embodied in hardware or firmware, or to a collection of software instructions, . . . The modules described herein are preferably implemented as software modules." (¶ [0081].)

III. PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation." *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375 (Fed. Cir. 2005), citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992).

> Anticipation of a patent claim requires a finding that the claim at issue 'reads on' a prior art reference. In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.

Atlas Powder Co. v. IRECO, Inc., 190 F.3d 1342, 1346 (Fed Cir. 1999) (internal citations omitted).

IV. ANALYSIS

Grouping of Claims

In the Brief, Appellant argues claims 15, 17, and 18 as a group (App. Br. 10-13). For claims 17 and 18, Appellant repeats the same argument made for claim 15. We will, therefore, treat claims 17 and 18 as standing or falling with claim 15.

Appellant separately argues claim 16. *See* 37 C.F.R. § 41.37(c)(1)(vii); *See also In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991).

The Anticipation Rejection

We now consider the Examiner's rejection of the claims under 35 U.S.C. § 102(b) as being anticipated by Mikesell.

Claims 15, 17, and 18

Appellant contends that "[i]f the Answer relies on the combination of the server 120 and distributed file system 110 to be the claimed server, then the Answer fails to make a *prima facie* case of anticipation for failing to disclose the separated claimed first and second storage devices." (Reply Br. 2.) Appellant further contends that "if the Answer relies on the server alone for the claimed server, then the Answer fails to make a *prima facie* case of anticipation because it is the smart storage units 114 of the distributed file system 110, not the server 120, that make decisions regarding where files are stored." (*Id.*)

The Examiner found that "[t]he Server 120 including intelligent distributed file system 110 corresponds to Applicant's server and paragraphs [0076-0101] of Mikesell discloses the above limitation." (Ans. 6.)

Issue: Has Appellant shown that the Examiner erred in finding that Mikesell discloses the selection of the storage location made by the server based on attributes of the storage devices and storage preferences for the file?

Although Appellant gives alternative arguments, it is clear that the Examiner is relying on a combination of units to establish the claimed

"server". For example, the Examiner found that the claimed server and its corresponding functions read on the combination of Mikesell's server 120 and the intelligent distributed file system 110 (Ans. 6). Appellant admits that Mikesell's smart storage units 114, which are incorporated in the intelligent distributed file system 110 (*see* Mikesell's Fig. 1), makes decisions regarding where to store files (Reply Br. 2), but argues that the first and second storage devices are separate devices (*id.*). Given that Appellant admits that Mikesell discloses a smart storage unit that makes decisions on where to store files, the only question that remains is whether this storage unit can be combined with Mikesell's server 120, as noted by the Examiner.

Claim 15 recites, *inter alia,* that the first and second storage devices are *coupled to* the server, and does not require that the storage devices be separate/distinct units from the server. One of ordinary skill in the art would recognize that a "coupling" merely signifies some type of link. Thus, contrary to Appellant's arguments, the claimed first and second storage devices are only required to be linked to the server, not separate devices from the server. Further, we note that Mikesell discloses that its intelligent distributed system uses statistics from smart storage units to decide where the best location is to put new incoming data (FF 1). Thus, Mikesell's selection of the storage locations is made by the "server" based on statistics/attributes of the storage devices.

As such, we find reasonable the Examiner findings that the claimed "server" reads on Mikesell's combined server 120 and intelligent distributed file system 110.

Appellant further contends that "Mikesell still fails to expressly or inherently teach that the smart storage unit 114 could or should 'accept files in a user namespace and in a user file structure.'" (App. Br. 13.)

The Examiner found that Mikesell "accept files in a user namespace (hierarchical naming) and in a user file structure (metadata data structure)." (Ans. 7.)

Issue: Has Appellant shown that the Examiner erred in finding that Mikesell discloses that the server is configured to accept files in a user namespace and in a user file structure?

In the Answer, the Examiner noted that Mikesell's disclosure of hierarchical naming and a metadata data structure shows a user namespace and a user file structure, respectively (Ans. 7). Specifically, Mikesell discloses that handling metadata data structure lookup and management and a VFS namespace (FF 2). The Reply Brief fails to contest the responsive arguments of the Examiner. Thus, we find that Appellant has not shown that the Examiner erred in finding that Mikesell discloses accepting files in a user namespace and in a user file structure.

Appellant has not persuaded us of error in the Examiner's conclusion of anticipation for representative claim 15. Therefore, we affirm the Examiner's § 102 rejection of independent claim 15. Appellant has elected to group dependent claims 17 and 18 with independent claim 15. (App. Br. 10.) Therefore, these claims fall with claim 15.

Claim 16

Appellant contends that "Mikesell still fails to expressly or inherently teach a software agent on the server 120 could or should 'decide[] on which

of the first and second storage devices to store the file based on the attributes of the storage devices and the storage preference for the file.'" (App. Br. 14.)

The Examiner found that the software agent "corresponds to Mikesell smart storage unit 114, Figure 1 which includes different modules such as block allocation manager module and forward allocator module." (Ans. 7-8.)

Issue: Has Appellant shown that the Examiner erred in finding that Mikesell discloses a software agent that executes on the server?

As noted *supra*, Mikesell discloses a server 120 and an intelligent distributed file system 110 that act together to form the claimed "server" which decides on which of the first and second storage devices to store the incoming files. The Examiner found that Mikesell's smart storage unit 114 includes several modules that interface with the client computer and act as software agents (Ans. 7-8). Further, Mikesell expressly discloses that the modules are implemented as software modules (FF 3). Again, the Reply Brief fails to contest these responsive arguments of the Examiner. Thus, we find that Appellant has not shown that the Examiner erred in finding that Mikesell discloses a software agent that executes on the server.

Appellant has not persuaded us of error in the Examiner's conclusion of anticipation for claim 16. Therefore, we affirm the Examiner's § 102 rejection of dependent claim 16.

V. CONCLUSIONS

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 15-18.

Thus, claims 15-18 are not patentable.

VI. DECISION

In view of the foregoing discussion, we affirm the Examiner's rejection of claims 15-18.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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